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GATT Experience with Safeguards

Making Economic and Political Sense of the Possibilities that the GATT Allows to Restrict Imports

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Suggested guidelines for a safeguards process that emphasizes an import restriction's impact on the domestic economy: Domestically, who would benefit from the proposed restriction and who would lose, and by how much? And how would import-using interests be affected?

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Summary findings

Realizing that trade liberalization would require periodic adjustments because of problems in particular industries, GATT's framers provided that tariff reductions that led to such problems could be renegotiated; in an emergency a country could raise its tariff first and negotiate compensation with the principal exporting countries later.

GATT lists many provisions that allow import restrictions, provisions that, over time, have proven quite fungible. Renegotiations were replaced by negotiated quantitative restraints (VERs), which were replaced by antidumping. The problem (troublesome imports) was always the same, but the instruments changed.

And none of the instruments made much political or economic sense.

They did not help a government isolate those import restrictions for which the benefits to the domestic economy would exceed the costs.

And politically, the procedures through which renegotiations, VERs, or antidumping actions are decided provide a public tribune for interests that would benefit from protection but provide no voice for

domestic interests that would bear the costs of restricted access to imports.

Finger offers guidelines for a safeguards process that makes more economic and political sense:

- *Identify the costs and losers as well as the benefits and winners.*

- *Be clear that the action is an exception to the principles underlying the liberalization program.*

Emphasize that too many such exceptions would constitute abandonment of the liberalization program and its benefits. Included in the investigation process should be an expression of the costs the proposed restriction would impose.

- *Don't sanctify the criteria for the action.* Procedures should not presume, as antidumping does, that there is some good reason for granting exceptions. Providing a list of good reasons invites protection-seekers to demonstrate that they qualify and places the government in the position of having to demonstrate that they do not. Procedures should stress that the function of the review is to identify the benefits, costs, and domestic winners and losers from the action requested.

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GATT EXPERIENCE WITH SAFEGUARDS:
Making Economic and Political Sense of the Possibilities That the GATT
Allows to Restrict Imports

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SUMMARY

GATT EXPERIENCE WITH SAFEGUARDS:

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GATT's framers realized that trade liberalization would require periodic adjustments to take into account particular problems that would arise in particular industries. The original GATT provided that tariff reductions that led to such problems could be renegotiated. In an emergency, a country could raise its tariff first, then negotiate compensation with the principal exporting countries.

GATT also includes a long list of other provisions that allow import restrictions, and over time, these provisions have proven to be quite fungible. Whatever the reason behind a government's "need" to raise a tariff rate, the action could be given legal cover under any number of provisions.

Over time, countries whose tariffs have been effectively bound under the GATT have used different instruments to deal with troublesome imports: renegotiations were eventually replaced by negotiated quantitative restraints (VERs), VERs in turn gave way to antidumping. The problem was always the same -- troublesome imports -- but the politically and legally most convenient instrument to deal with these troublesome imports changed.

From the perspective of both economic and political sense, none of these instruments have much to recommend them. In economics, none of them helps a government to isolate those import restrictions for which the benefits to the domestic economy would exceed the costs. In politics, the procedures through which renegotiations or VERs or antidumping actions are decided provide a public tribune for interests that would benefit from protection, but provide no voice for the domestic interests who would bear the costs of restricted access to imports. Antidumping is particularly unsuitable because it provides protection-seekers the rhetorical opportunity to complain about foreign unfairness, yet it gives the government no basis for answering that rhetoric in cases in which the national economic interest would not be served by the restriction.

The key determinant of when an import restriction will be imposed should be its impact on the domestic economy. Who in the domestic economy would benefit from the proposed import restriction, and who would lose? On each side, by how much? It is important to emphasize that import using interests should be taken into account. GATT/WTO safeguard procedures require only that a trade restricting action be preceded by an injury determination, a determination that domestic import competing producers would benefit. They do not however disallow the consideration of the impact on users.

The following guidelines are offered for a safeguards process that would make economic and political sense.

Identify the costs and the losers as well as the benefits and the winners. The sense of this is explained just above.

Be clear that the action is an exception. Public statements should establish that the requested action would be an exception to the principles that underlay the liberalization program and should emphasize that an accumulation of such exceptions would constitute abandonment of the liberalization program and loss of its benefits. Including in the investigation process an expression of the costs that the proposed restriction would impose will help to make the point that the action is an exception to the generally beneficial policy of openness to international competition.

Don't sanctify the criteria for the action. Procedures should not presume, as antidumping does, that there is some good reason for granting exceptions. Providing a list of good reasons invites protection-seekers to demonstrate that they qualify, and places the government in the position of having to demonstrate that they do not. Procedures should stress that the function of the review is to identify the benefits, costs, and the domestic winners and losers for the requested action.

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GATT EXPERIENCE WITH SAFEGUARDS:

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Trade liberalization is not rocket science. Any program that significantly opens the domestic market to international competition will require a degree of fine tuning. Likewise, any government that maintains a liberal trade policy will be subject to occasional pressures for exception treatment, e.g., temporary protection for a particular industry. Thus, part of the politics of safeguarding a generally liberal trade policy is to have in place a policy mechanism for managing such pressures; i.e., for considering petitions for protection that is exceptional to the general thrust of policy.

This paper is about such policies. The analytical part reviews the use of GATT/WTO rules that specify how and when a member country may introduce a new trade restriction or replace an old one. (I do not distinguish one instance from the other.)

I draw two major lessons from this analysis:

1. GATT/WTO rules are fungible. At different times, members have used different instruments to handle safeguard issues.¹
2. GATT/WTO rules do not distinguish economically sensible trade restrictions – those that add more to the national economic interest than they take away – from ordinary protection.

The prescriptive part of the paper draws lessons from the GATT/WTO experience, lessons that a government might take into account when it is deliberating the structure of a safeguard

¹ A corollary is that GATT/WTO rules that there is considerable overlap between GATT/WTO rules that provide a pressure valve against domestic pressures for protection and those that police the “fairness” of trade practices.

mechanism that would help it to manage pressures from particular industries for “exceptional” import protection as the government implements a liberalization program or works to maintain a policy of openness to international competition.

An important dimension of the policy is that there is more to designing a sensible safeguard mechanism than simply to find what trade restrictions the GATT/WTO allows. In this regard, GATT/WTO rules are too generous — imposing all the restrictions that are allowed would isolate an economy from the global system. The challenge a government faces is to identify, among the many processes the GATT/WTO allows, a safeguard system that makes economic and political sense — one that separates between restrictions that will and will not advance the national economic interest and one whose political dimensions will help to support the government’s concern to integrate its economy into the global system.

Until the end of the Uruguay Round, GATT specifications of allowed trade restrictions were of limited relevance to developing countries. Many developing countries had bound only a few of their tariff positions under the GATT; hence they could increase these tariffs without violating their GATT obligations. Another was that the detailed specifications for many trade restrictions the GATT allowed were provided in the Tokyo Round Codes, and many developing countries who were GATT members chose not to subscribe to the Codes.

The Uruguay Round agreements changed things. All parts of the agreements apply to all members (a country does not have the option to sign one agreement but not another) and developing countries have all submitted schedules of bound tariff rates.² The GATT/WTO guidelines and specifications thus apply to developing countries, and the experience with these guidelines and specifications by other countries is now relevant to the policy choices that developing countries will make.

² A number of developing countries have maintained some leeway by binding at rates that are above presently applied rates.

1. GATT EXPERIENCE WITH SAFEGUARD PROVISIONS

While the GATT is perhaps best known as the patron of agreements to remove trade restrictions, it includes a number of provisions that allow countries to impose new ones. Twenty of them are listed in Table 1, and the list could be longer. Article XX, (General Exceptions) for example, includes 10 sub-categories of allowed restrictions.³

PRESSURE VALVES IN GATT 1947

The industrial countries have opened their economies to international competition primarily through reciprocal negotiations under the GATT. These reductions, particularly at the beginning, were taken tentatively — the signatories left themselves room to adjust the reductions each had agreed. The agreement gave each country an automatic right to renegotiate any of its reductions after three years (Article XXVIII), and under “sympathetic consideration” procedures, reductions could be renegotiated more quickly. Even quicker adjustment was possible under Article XIX. In instances of particularly troublesome increases of imports, a country could introduce a new restriction then afterwards renegotiate a compensating agreement with its trading partners.⁴ The idea of compensation was the same here as with a renegotiation, to provide on some other product a reduction that suppliers considered equally valuable.

GATT's initial signatories recognized the need to provide for adjustment.

In the 1950's the GATT was amended to add more elaborate renegotiation provisions. Though the details were complex, the renegotiation process, in outline, was straightforward.

1. A country for which import of some product had become particularly troublesome would advise the GATT and the principal exporters of that product that it wanted to renegotiate its previous tariff reduction.

³ For example, restrictions necessary to protect human, animal or plant life or health, restrictions related to the conservation of exhaustible natural resources.

⁴ The early GATT rounds were collections of bilateral negotiations, but tariff cuts had to be made on a most favored nations basis (i.e., applicable to imports from all GATT members). A renegotiation was not with the entire GATT membership, but only with the country with whom that reduction was initially negotiated, plus any other countries enumerated by the GATT as “principal suppliers.”

2. If, after a certain number of days, negotiation had not reached agreement, the country could go ahead and increase the tariff.
3. If the initiating country did so — and at the same time did not provide compensation that exporters considered satisfactory — then the principal exporters were free to retaliate.
4. All of these actions were subject to the most favored nations principle; the tariff reductions or increases had to apply to imports from all countries.⁵

Article XIX, titled “Emergency Actions on Imports of Particular Products,” but often referred to as the escape clause or the safeguard clause, provided a country with an import problem quicker access to essentially the same process. Under Article XIX:

1. If imports cause or threaten serious injury⁶ to domestic producers, the country could take emergency action to restrict those imports.
2. If subsequent consultation with exporters did not lead to satisfactory compensation, then the exporters could retaliate.

The GATT asked the country taking emergency action to consult with exporting countries before, but allowed the action to come first in “critical circumstances.” In practice, the action has come first most of the time.⁷

History shows that during GATT’s first decade and a half, countries opening their economies to international competition through the GATT negotiations did avail themselves of *pressure valve* actions (Chart 1). These actions were in large part renegotiations under Article XXVIII, supplemented by emergency actions (restrict first, then negotiate compensation) under the procedures of Article XIX.⁸ By 1963, fifteen years after the GATT first came into effect, every one of the 29 GATT member countries who had bound tariff reductions under the GATT

⁵ Renegotiation procedures are basically the same now -- under the Uruguay Round Agreements -- as they were then.

⁶ The Uruguay Round agreement on safeguards (but not the initial GATT) requires a formal investigation and determination of injury. It allows however a provisional safeguard measure to be taken before the investigation is completed.

⁷ GATT 1994, p. 486. The Uruguay Round Safeguards Agreement modified the emergency action procedure in several ways. Among these,

- no compensation is required nor retaliation allowed in the first three years a restriction is in place.
- no restriction (including extension) may be for more than eight years, (ten years by a developing country).
- all measures of more than 1 year must be progressively liberalized.

⁸ Though, as Chart 1 shows, the mix shifted over time toward a larger proportion of emergency actions.

had undertaken at least one renegotiation — in total, 110 renegotiations, or almost four per country.

In use, Article XIX emergency actions and Article XXVIII renegotiations complemented each other. Nine of the 15 pre-1962 Article XIX actions that were large enough that the exporter insisted on compensation (or threatened retaliation) were eventually resolved as Article XXVIII renegotiations. Article XXVIII renegotiations, in turn, were often folded into regular tariff negotiations. From 147 through 1961, five negotiating rounds were completed; hence such negotiations were almost continuously under way.

In GATT's early years, renegotiations and emergency actions followed by renegotiations were the principle mechanisms for making adjustments.

OTHER GATT PROVISIONS THAT SERVE AS PRESSURE VALVES

In GATT's first decade and a half the renegotiation and emergence action provisions served, for countries that had reduced and bound their tariffs through the GATT,⁹ as the procedures through which the countries would adjust their trade policy to troublesome imports. This was as the GATT's initial framers have intended. In time, however, these mechanisms were replaced by others.

Negotiated export restraints

By the 1960s formal use of Article XIX and of the renegotiations process began to wane. Actions taken under the escape clause tended to involve negligible amounts of world trade in relatively minor product categories.¹⁰ Big problems such as textile and apparel imports were handled another way, through the negotiation of "voluntary" export restraint agreements, VERs. The Long-Term Cotton Textile Arrangement, negotiated in 1962, brought GATT sanction to industrial countries' VERs on cotton textiles and apparel. The Multifibre Arrangement, first negotiated in 1972 and only now being phased out, extended the GATT sanction for such restrictions to virtually all textile and clothing products. The same method, negotiated export

⁹ This did not include most of the developing countries who were members of the GATT.

¹⁰ 1980 statistics show that actions taken under Article XIX covered imports valued at \$1.6 billion while total world trade was at the same time valued at \$2000 billion. Sampson (1987), p. 145.

restraints, or VERs, were used by the industrial countries to control troublesome imports into several other important sectors, e.g., steel (Table 2).

By the 1970's negotiated or "voluntary export restraints" (VERs) had become the common mode for dealing with troublesome imports.

Except for those specially sanctioned by the textile arrangements, VERs were clearly GATT-illegal.¹¹ However, while VERs violated GATT legalisms they accorded well with its ethic of reciprocity:

- They were at least in form, negotiations to allow replacement of restrictions that had been negotiated down. Negotiation was also important to prevent a chain reaction of one country following another to restrict its imports as had occurred in the 1930s.
- A VER did provide compensation, the compensation being the higher price that the exporter would receive. Had imports been restricted to the same volume by a tariff, the scarcity value (rent) of the restriction would have been collected by the importing country
- In many instances the troublesome increase of imports came from countries that had not been the "principal suppliers" with whom the initial concession had been negotiated. These new exporters were displacing not only domestic production in importing countries, but the exports of the traditional suppliers as well. A VER with the new, troublesome, supplier could thus be viewed as defense of the rights of the principal suppliers who had paid for the initial concession.

The reality of power politics was another factor. Even though one of GATT's objectives was to neutralize the influence of economic power on the determination of trade policy, VERs were frequently used by large countries to control imports from smaller countries.

VERs, though GATT-illegal, were more consistent with GATT's ethic or reciprocity than unilateral actions would have been.

As the renegotiation, emergency action mechanism was replaced over time by the use of VERs, VERs also gave way to another mechanism -- antidumping. There were several reasons behind this evolution:

- the growing realization in industrial countries that a VER was a costly form of protection,¹²

¹¹GATT 1994, p.494.

- the long term legal pressure of the GATT rules,
- the availability of an attractive, GATT-legal, alternative.

The Uruguay Round agreement on safeguards explicitly bans further use of VERs and, along with the agreement on textiles and clothing, requires the elimination of all such measures now in place.

Antidumping

Antidumping was a minor instrument when GATT was negotiated, and provision for antidumping regulations was included with little controversy. In 1958, when the contracting parties finally canvassed themselves about the use of antidumping, the resulting tally showed only 37 antidumping decrees in force across all GATT member countries, 21 of these in South Africa. (GATT 1958, p. 14) Since then, antidumping has become the industrial countries' major safeguard instrument, and is gaining increasing popularity among developing countries. The scale of use of antidumping is a magnitude larger than the scale of use of renegotiations and emergency actions have ever been. (Chart 2) In the 10 years through 1993, for example, only 30 Article XIX actions were notified to GATT: 3 a year as compared with 164 antidumping cases a year.¹³

Antidumping has become the main instrument to deal with troublesome imports.

In the United States, the shift from other measures to antidumping was propelled by the US Congress' desire to regain control over trade policy from the Executive. This branch of government controlled tariff renegotiations, the implementation of emergency actions and the negotiation of VERs. By broadening and strengthening the antidumping law, and eliminating Presidential discretion to override an affirmative finding, the Congress could give constituents access to import relief that would not be diluted by the President's general foreign policy interests.

The reasons antidumping emerged as a major policy instrument in the European Union were similar. Slower growth made European governments sensitive to the displacement of domestic production by emerging Asian exporters. It was a *European Union* instrument; by the

¹² For example, Hufbauer and Elliott found that of the welfare loss placed on the US economy from all forms of protection in place in the early 1990s, over 83 percent of that loss came from VERs.

¹³ GATT 1993, pp. 16, 26. The tally of antidumping orders is partial.

Treaty of Rome, the EU Commission could take antidumping action, the member states could not. The Commission, with the instinct of any organization for demonstrating its usefulness and thereby expanding its turf, pressed forward with antidumping action to preempt member state governments from serving industries' increased demand for protection.

Antidumping's rise to prominence had nothing to do with the logic of a sensible pressure valve instrument.

Once antidumping proved itself to be applicable to any case of troublesome imports, its other attractions for protection seeking industries and for governments inclined to provide protection were apparent.

- Particular exporters could be picked out. GATT/WTO does not require multilateral application.
- The action is unilateral. GATT/WTO rules require no compensation or renegotiation.
- In national practice, the injury test for antidumping action tends to be softer than the injury test for action under Article XIX.
- The rhetoric of foreign unfairness provides a vehicle for building a political case for protection.
- Antidumping and VERs have proved to be effective complements; i.e., the threat of formal action under the antidumping law provides leverage to force an exporter to accept a VER.¹⁴
- The investigation process itself tends to curb imports. This is because exporters bear significant legal and administrative costs, importers face the uncertainty of having to pay backdated antidumping duties, once an investigation is completed.

As practice in the initial users of antidumping demonstrated that the instrument could be applied to virtually any instance of troublesome imports, its use spread to more countries. The

¹⁴ Over 1980-1988, 348 of 774 United States antidumping cases were superseded by VERs (Finger and Murray, 1993). July 1980 through June 1989, of 384 antidumping actions taken by the European Community, 184 were price undertakings. (Stegmann, 1992).

data in Table 3 list the countries that have notified antidumping actions to the WTO,¹⁵ the list including 17 developing countries.

Discipline over antidumping

Though the Uruguay Round agreement on antidumping did not impose major disciplines, the use of antidumping by the industrial countries has declined notably since the mid 1990s. Behind this decline have been two factors: (1) an increasing realization in the industrial countries that their use of antidumping has not served their national interests, (2) general economic prosperity – when business is good, petitions for import protection slack off.

Australia was perhaps the first country to realize that its attempt to deregulate industry and to liberalize trade was being compromised by its own antidumping actions. Australia had traditionally supported its manufacturing with quantitative import restrictions and subsidies. When the Hawke government in the early 1980s began to liberalize these, protection seeking interests increasingly filed for antidumping protection. Australia, for several years, initiated more antidumping cases than any other country. The Hawke government, realizing that antidumping was about to outflank its reform program, pushed through Parliament a revision of Australia's antidumping law. The revision provided oversight that allows the government to determine antidumping actions on the basis of its general trade policy principles.¹⁶

In the United States, industries that use imported inputs, led by the computer industry and a well-organized group of metals users, have brought increasing pressure on the government to take their interests into account in any decision to restrict imports. Their influence brought the US Congress in April 1996 to hold hearings on possible modification of the US antidumping law. The law was not amended, in significant part because the US Department of Commerce, the administrator of the US law, testified at these hearings that the concerns of the user industries could be taken into account by revisions of administrative procedures. Antidumping initiations in the United States have declined from more than 60 per year in 1992-1993 to only 20 in 1997. (Annex Table)

¹⁵ The Uruguay Round antidumping agreement requires that all members notify all antidumping actions to the WTO.

¹⁶ Banks (1993) reviews this experience.

In the European Union, pressure from domestic industries that pay the cost of antidumping protection have combined with the foreign policy interests of the EU to bring a similar reduction of antidumping cases¹⁷. The European Commission is at present considering modification of its antidumping procedures to take into account a wide range of parties on all sides of the issue.¹⁸

Realization that their antidumping actions were inconsistent with the overall shape of their trade policies has led some industrial countries to notably reduce their use of antidumping.

The developing countries have apparently not yet realized the need for internal discipline over the use of antidumping. While use of antidumping has been declining among the industrial countries, it is rising among developing countries. As of July 1996, a total of 58 developing and transition economy countries have notified antidumping laws or regulations to the WTO. Indeed, in the latest period for which the WTO tabulation is available (July 1996 - June 1997) developing countries initiated more antidumping investigations than did industrial countries. (Chart 3)

Developing countries have not yet realized the dangers in the use of antidumping.

LESSONS FROM GATT/WTO EXPERIENCE

In understanding such GATT provisions, it is useful to remember that in the immediate post WW-II period the International Trade Organization (ITO) negotiations were the centerpiece of international commercial diplomacy. This was the forum at which the international community negotiated over rules and institutions for the trading system. The GATT emanated from a more modest negotiation intended only to reach agreement to reduce tariffs. The rules for implementing these reductions, participants presumed, would be agreed at the ITO negotiations. The ITO negotiations never came to agreement, but basically the same countries did reach agreement to reduce tariffs. Needing a legal instrument (contract) that put these reductions into effect the tariff negotiators put together the GATT. With the pressure on to implement the agreed reductions before protectionist interests could block them, the reformers attempted to buy

¹⁷ In the late 1980s and early 1990s, almost half of EU antidumping cases were against Eastern European countries.

¹⁸ International Trade Reporter, p. 257.

off the protectionists by including in the GATT a number of provisions that would allow countries to impose new trade restrictions. They did not have time to think through the long-run implications of these provisions. Fifty years of experience however make evident the following lessons.

Lesson 1: GATT provisions are fungible.

Each GATT provision for import restrictions appears to apply only in a specific circumstance; e.g., a restriction necessary for national security, to safeguard the balance of payments, to promote an infant industry, to offset dumping. In practice, these provisions have proven to be quite fungible. The industrial countries' practice shows that action against troublesome imports can be legally packaged as an Article VI antidumping action, or just as conveniently, as an Article XIX emergency action. Similarly, developing countries seeking GATT legality for restrictions that were, in economics, infant industry protection (Article XVIII.C), found it administratively more convenient — and no legal problem — to declared them as restrictions to protect the balance of payments (Article XVIII.B)¹⁹

Lesson 2: GATT provisions provide little discipline.

GATT's drafters presumed that discipline would be provided by reciprocity. That is why they established renegotiation and emergency actions as the means by which a country would adjust its tariff rates to troublesome imports. The evolution of the VER evaded the power of reciprocity as pressure against restrictions. Antidumping, today's favorite instrument, is completely outside the bounds of reciprocity — unilateral action is explicitly permitted.

As to the provisions (in Table 1) that specify when various restrictive actions may be taken, practice has shown that such action is almost always possible under the rules. In short, GATT allows import relief in every instance in which imports cause or threaten injury, i.e., are troublesome to domestic competitors. Import relief therefore is available in every instance in which domestic competitors would complain. The Uruguay Round Antidumping Agreement makes no attempt to correct the weakness of the economic principles on which GATT/WTO

¹⁹ The point is documented in Finger and Winters (1998)

treatment of antidumping is based. Its attempts to discipline the imposition of new restrictions depend entirely on procedural, not substantive constraints.

Lesson 3: GATT provisions do not provide a basis for sorting between restrictions that would serve the national economic interest and those that would not.

This conclusion follows quickly from the previous two. When import competing producers would benefit from protection (injury would be avoided), the rules allow protection. The rules do not require that a government, in deciding on a petition for protection, take into consideration the costs that would accrue to domestic users of imports. The Box (attached) elaborates this point.

These conclusions do not mean that the GATT rules cannot be useful to a government that wants to maintain a liberal trade policy. The rules do not require protection in every instance in which they allow it. As Section II will explain, the procedural and transparency guidelines the GATT/WTO provide can be the basis of an economically and politically sensible mechanism for determining when requests for exceptional protection will be honored, and when not.

2. AN ECONOMICALLY SENSIBLE SAFEGUARD MECHANISM

Implementing a sensible safeguards policy is not rocket science. In the abstract, good economic policy consists of government interventions that make economic sense -- that provide greater benefits than costs to members of the society for which the government is responsible. In practice, maintaining an economically sensible international trade policy is often a matter of avoiding interventions that have greater costs than benefits — or when the realities of domestic politics are taken into account — a matter of minimizing the number or the effect of such interventions.

There will be cases in which other domestic considerations make it impossible to avoid an economically unsound trade intervention. In those instances, good policy becomes a matter of:

- making restrictions transparent;

- avoiding their becoming precedent for further restrictions; and,
- managing them so as to strengthen the politics of avoiding rather than of imposing such restrictions.

ANTIDUMPING IS A BAD INSTRUMENT

Antidumping is not a good instrument for fine tuning -- for determining changes in the degree of protection provided different industries. The reasons follow.

Antidumping's criteria make no economic sense. They do not provide a government a basis for sorting out those interventions that would provide greater benefits than costs to the domestic economy.²⁰

Antidumping arms protection-seeking interests with the emotionally compelling argument that foreigners are behaving unfairly. It provides however the government no basis for answering that argument. A review by the OECD of antidumping cases in Australia, Canada, the European Union and the United States found that 90 percent of the instances of import sales found to be unfair under antidumping rules would have been considered fair (under competition law) if practiced in domestic commerce, i.e., if used by a domestic enterprise in making a domestic sale.²¹

The Uruguay Round agreement on antidumping includes onerous requirements on procedure and documentation. During the Uruguay Round negotiations, a group of countries tried to eliminate a number of ambiguities and loopholes that allow its widespread application. They had no success in eliminating these provisions; their only success was in adding detailed procedural and notification requirements. These requirements bear on a government in two ways. First, they make the investigation process expensive. Second, they provide neither political nor economic basis to answer a protection-seeking interest's exploitation of the rhetoric of unfairness. The Korean government, for example, was found by a GATT panel to have improperly imposed an antidumping duty because of the form in which the records of the investigating commission were kept. That left the Korean government squeezed between, the legal obligation under the

²⁰ The competitive practices that antidumping advocates accuse foreign enterprises of following are sometimes those that would harm the national economic interest of the importing country. An antidumping investigation does not serve to establish that these practices, in fact, have been used. The rhetoric of antidumping is one thing, what one has to prove in order to gain import relief is another.

²¹ OECD Economics Department 1996, p. 18

GATT to lift the antidumping duty, and on the other side, the argument that the protection-seeking industry had presented. The procedural infraction cited by the GATT panel gave the Korean government neither economic nor political argument with which to answer the industry.²² In domestic politics, a GATT decision based on such grounds would tend to discredit the idea of following international rules. It would not buttress the politics of integration into international markets.

Antidumping provides a no lose situation for a protection-seeking industry, a no win situation for the government.

Finally, antidumping focuses on the wrong issue. The nature of the foreign business practice is not the key issue. The key issue is the impact on the local economy.

A BETTER SAFEGUARD MECHANISM

The key issue is the impact on the local economy. Who in the local economy would benefit from the proposed import restriction, and who would lose? On each side, by how much? It is therefore critical that the policy process by which the government decides to intervene or not to intervene gives voice to those interests that benefit from open trade and would bear the costs of the proposed intervention. In this spirit, I outline below a policy mechanism that would:

- first, help the government to separate trade interventions that would serve the national economic interest from those that would not, and
- second, even in those instances in which the decision is to restrict imports, support the politics of openness and liberalization.

Guidelines for procedures

A familiar investigation of injury from imports to competing domestic producers would be part of an economically sensible safeguard procedure. However, as explained in the Box, an injury investigation captures only half of the impact on the domestic economy. It identifies those domestic interests that would benefit from the proposed restriction, but it leaves out of account those interests who would be penalized by restricted access to imports. These costs, and the

²² The example is not a isolated one. Finger and Fung (1993) document that every antidumping action that had been brought to a GATT panel had been found to be in violation on procedural grounds.

people in the domestic economy who will bear them, should have the same standing in law and in administrative practice as the other side already enjoys. Economic analysis of the impact of the restriction on users would proceed in parallel with the analysis of “injury” to competing domestic producers. More expensive imports will cost somebody money and eliminate somebody’s job if imports are needed materials. The concepts and techniques would be much the same. Injury (to users of imports) that would result from reduced access to imports would be measured in the same dimensions as injury (to those who compete with imports) from import competition: lost sales, lost profits, lost jobs, etc.

A process of the sort suggested makes political as well as economic sense. By giving voice to interests that would bear the costs of the proposed import restriction, the process will help to fortify the politics of not granting the restriction.

The following are general guidelines.

Identify the costs and the losers. Procedures should bring out the costs of the requested exception, and the identities of the persons or groups who will bear these costs. More expensive imports will cost somebody money and — if the imports are needed materials — eliminate somebody’s job. These costs, and the people in the domestic economy who will bear them, should have the same standing in law and in administrative practice as the other side already enjoys. The process of considering the request for an exception should be used to help fortify the politics of not granting it.

Be clear that the action is an exception. Public statements should establish that the requested action would be an exception to the principles that underlay the liberalization program and should emphasize that an accumulation of such exceptions would constitute abandonment of the liberalization program and loss of its benefits. Including in the investigation process an expression of the costs that the proposed restriction would impose will help to make the point that the action is an exception to the generally beneficial policy of openness to international competition.

Don’t sanctify the criteria for the action. Procedures should not presume, as antidumping does, that there is some good reason for granting exceptions. Procedures that compare the situation of the petitioner with pre-established criteria for granting import relief should be

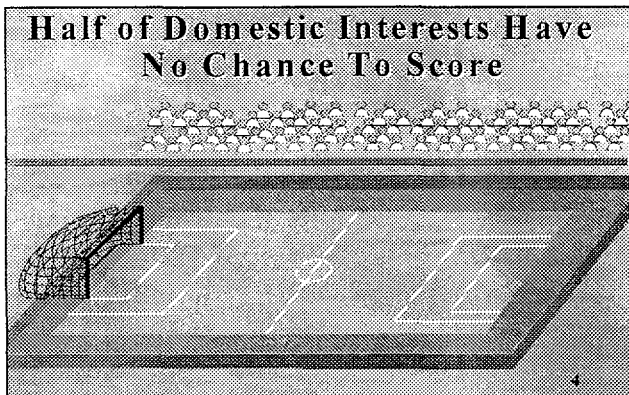
avoided. Procedures should stress that the function of the review is to identify the benefits, costs, and the domestic winners and losers for the requested action.

The third guideline is more important than it might seem. The history of antidumping and other trade remedies shows that clever people will always be able to present their situation exactly as the criteria describe. If you start out to find just the few exporters who are being unfair to Mexico or to the United States or to Ecuador, you will soon be swamped by evidence that everyone is.

At the technical level, useful concepts for investigation procedures — such as transparency and automatic expiration for any exception that is granted (a sunset clause) — can be gleaned from procedural requirements included in the Uruguay Round Safeguards Agreement.

BOX: THE FLAWED ECONOMICS OF BASING DECISIONS ON AN INJURY INVESTIGATION

Economists demonstrated more than two centuries ago that import restrictions often subtract more from the national economic interest of the country that imposes them than they add to it. There is nothing in such economics to suggest that import competition will be beneficial to all domestic interests, i.e., not be troublesome to some domestic interests. On the contrary, there are net gains from trade because the benefits to some domestic interests exceed the cost of import competition to others



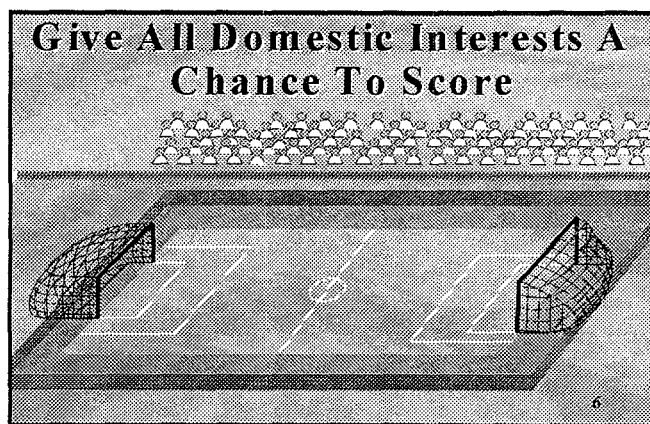
An injury investigation acknowledges only half of the familiar economics of international trade. It gives standing to the costs of trade, but it leaves out the gains. It enfranchises the domestic interests that bear the burden of import competition and would therefore benefit from an import restriction. However, it disenfranchises the domestic

interests that would bear the costs of the import restriction — or, on the reverse side, the gains from not imposing it.

As analogy, one might imagine the domestic interests that would benefit from the restriction playing right to left on the soccer pitch depicted above, while those that would bear the costs play left to right. The investigatory process allows goals only by import-competing interests. In the score that determines the outcome, the interests of users of imports and others that would bear the costs of the import restriction simply are not counted.

A safeguard petition is a request for an action by a government. Correctly deciding when to take or not to take action begins by asking the right question. The right question is, *Who in the domestic economy will benefit from the proposed action and who will lose—and by how much?*

Safeguard investigations should not focus solely on the effect of the proposed restriction on domestic producers of like or competing goods, but rather should focus on the national economic interest of the restricting country. *National economic interest*, in this context, is the sum of benefits to all nationals who benefit minus the costs to all nationals who lose. Injury, as



it is defined in safeguards and antidumping laws, takes into account only one of the two sides that make up the national economic interest. An economically sensible process would allow both sides — those that will benefit from a trade restriction and those that will bear the costs — to score.

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TABLES

Table 1: Frequency of Use of GATT Provisions that Allow Trade Restrictions

Instrument	Frequency of use
1. Provisions for renegotiating previous concessions and commitments	
Periodic - three year - renegotiations (at the initiative of the country wanting to increase a bound rate), §XXVII.1 and §XXVIII.5;	January 1955 - March 1994: 206 renegotiation procedures, 128 of these under §XXVIII.5. ⁱ
Special circumstance renegotiations (requires GATT authorization), §XXVIII.4;	Sixty-four renegotiations since 1948. ⁱⁱ
Increase of a duty with regard to formation of a customs union, §XXIV.6;	Follows procedures of §XXVIII, hence included in figures above.
Withdrawal of a concession in order to provide infant industry protection, §XVIII.A.	Nine withdrawals, through March 1994. ⁱⁱⁱ
2. Restrictions that can be imposed unilaterally	
General Exceptions, §XX	Notification not required. Between 1974-1987 six developing countries notified quantitative restrictions under §XX, covering 131 products. ^{iv}
Restrictions to apply standards, to classify, §XI.2.b	Notification not required. Between 1974-1987 six developing countries notified quantitative restrictions under §XX, covering 131 products. ^v
Restrictions on agricultural or fisheries products, §XI.2.c	Notification not required. No information available.
National security exception, §XXI	One developing country, Thailand, notified under §XXI between 1974-1987. Further information not available. ^{vi}
Withdrawal of a concession initially negotiated with a government that fails to join GATT, or withdraws, §XXVII.	As of 1994, §XXVII has been used by 15 countries with regard to: (a) withdrawals by China, Syria, Lebanon and Liberia; (b) Colombia, who participated in the Annecy Round (1949) but did not accede then; and (c) Korea and the Philippines, who participated in the Torquay Round (1951) but did not accede then. ^{vii}
Non-application at the time of accession, §XXXV.	As of 1994, this article had been invoked (a) against Japan by 53 countries - invocations since withdrawn by 50; (b) by 16 other countries against 21 countries. Only 10 §XXXV invocations are presently operative. ^{viii}
Restrictions to safeguard the balance of payments, general §VII.	Three countries had such restrictions in place at least one time during the period, 1974-1986. ^{ix}
Restrictions to safeguard the balance of payments, developing countries; §XVIII.B.	Twenty-four countries had such restrictions in place a least one time during the period 1974-1986. ^x
Emergency actions, §XIX.	1950 through 1984: 124 actions (3.6 a year) 1985 through 1994: 26 actions (3.25 a year) ^{xi}
Countervailing duties, §VI.	July 1985 - June 1992: 187 investigations (27 a year), of which 106 by the United States, 38 by Australia ^{xii}
Antidumping duties, §VI.	July 1985 - June 1992: 1148 investigations (164 a year), of which 300 by USA, 282 by Australia, 242 by EU, 124 by Canada, 84 by Mexico. ^{xiii}
3. Restrictions that require specific GATT approval	
Waivers, §XXV;	Through March 1994, 113 waivers granted, 44 still in force. ^{xiv}
Retaliation authorized under dispute settlement, §XXIII;	Once. ^{xv}
Exceptions specified in accession agreement, §XXXIII;	Not tabulated. ^{xvi}
Releases from bindings to pursue infant industry protection, §XVIII.C;	Nine countries in 47 years. ^{xvii}
Releases from bindings by a 'more-developed' country to pursue infant industry protection, §XVIII.D.	Never. ^{xviii}

Table 1: Notes

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- ⁱ GATT 1994, pp. 892-910.
- ⁱⁱ GATT 1994, pp. 892-910.
- ⁱⁱⁱ GATT 1994, p. 465. These were made by Benelux on behalf of: Suriname (1958), Greece (1956,65), Indonesia (1983), Korea (1958) and Sri Lanka (1955[2],56,57).
- ^{iv} OECD, 1992, p. 100. Information relating to Articles XX, XI and XXI is generally not available, since notification is not required. The OECD source cited provides information on developing country notification of these articles for the period noted.
- ^v OECD, 1992, p. 100. Information relating to Articles XX, XI and XXI is generally not available, since notification is not required. The OECD source cited provides information on developing country notification of these articles for the period noted.
- ^{vi} OECD, 1992, p. 100.
- ^{vii} GATT 1994, pp. 861-62.
- ^{viii} GATT 1994, pp. 958-960.
- ^{ix} Anjaria 1987, p. 675.
- ^x Anjaria 1987, p. 675.
- ^{xi} GATT 1994, pp. 500-516.
- ^{xii} GATT, Basic Instruments and Selected Documents, Annex Table "Summary of Antidumping Actions, [date]," 1985-86 through 1991-92 volumes.
- ^{xiii} GATT 1993, Appendix Table 1.
- ^{xiv} GATT 1994, pp. 828-839.
- ^{xv} GATT 1994, p. 630.
- ^{xvi} GATT 1994, p. 948 lists five countries whose protocols of accession included provisions allowing specific measures which were otherwise GATT-illegal to remain in place for a limited time.
- ^{xvii} Anjaria 1987, p. 670. These countries are Cote d'Ivoire, Indonesia, Malaysia, Thailand, Zimbabwe, Cuba, Haiti, India and Sri Lanka.
- ^{xviii} GATT 1994, p. 465.

Table 2: Arrangements in Force as of September 1989

<u>A. By period of Introduction</u>		<u>B. By Product</u>	
Prior to 1975	36	Food and other agricultural products	59
		Textiles and clothing*	44
1975-1979	39	Steel and steel products	44
		Electronic products	22
1980-84	69	Motor vehicles and equipment	20
		Footwear	12
1985-89	105	Machine tools	12
		Other	36
Total	249	Total	249

* Excluding bilateral quantitative restrictions on textiles and clothing imposed under the Multifibre Agreement.

Note: The restraint arrangements included in the table include voluntary export restraints, orderly marketing arrangements, export forecasts and discriminatory import systems, plus non-governmental and/or arrangements on an individual industry or industry association level, as well as unilateral restraint decisions.

Source: GATT (1991). The International Trade Environment: Report by the Director General, 1989-1990. Geneva: GATT.

Table 3: Recent Antidumping initiations and number of antidumping measures in force

Country or Group	Number of Initiations, 1 July 1996 - 30 June 1997 against				Measures in Force ^a on 1 July 1997
	China	D'ed C's	D'ing C's	Trans. Ec. C's	
Argentina	8	6	4	0	32
Australia	5	8	8	1	56
Brazil	5	5	6	3	23
Canada	2	2	2	2	95
Chile	0	0	0	2	2
Colombia	0	0	1	0	7
European Community	5	3	13	5	157
India	2	12	5	1	19
Indonesia	2	0	5	2	na
Israel	0	6	1	0	na
Japan	0	0	0	0	3
Korea	4	9	2	3	21
Malaysia	0	1	1	0	4
Mexico	0	3	2	0	100
New Zealand	0	0	1	0	26
Peru	2	0	1	0	6
Philippines	0	2	1	0	na
Singapore	0	0	0	0	2
South Africa	0	5	3	3	40
Thailand	0	0	0	1	na
Turkey	2	3	0	0	37
United States	6	7	5	2	305
Venezuela	0	0	0	0	3

Source: WTO, Committee on Antidumping Practices, "Semiannual Report Under Article 16.4 of the Agreement," for individual countries.

Notes:

^aIncludes definitive duties and price undertakings.

CHARTS

Chart 1
Renegotiations, Emergency Actions and VERS

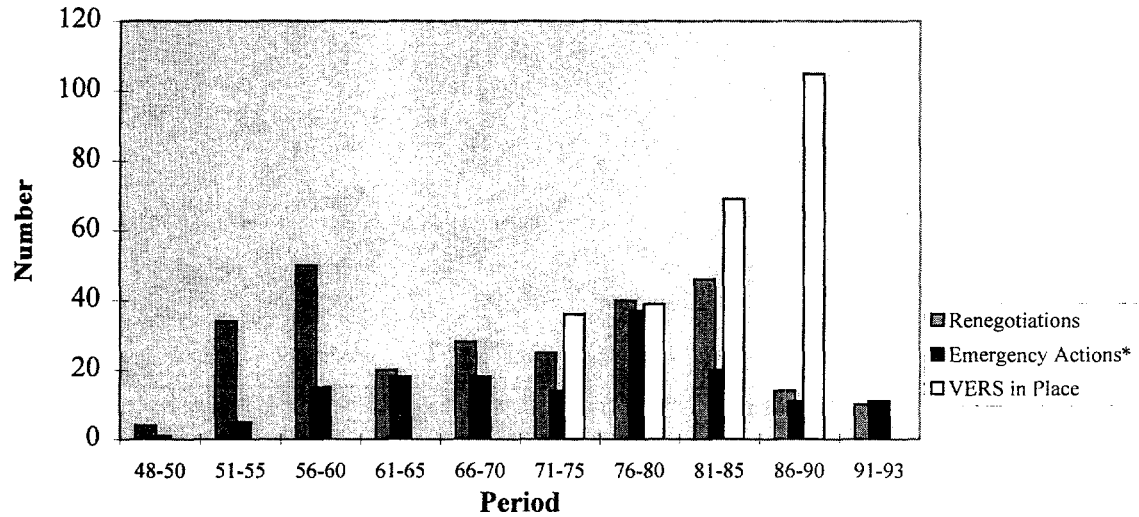


Chart 2
Renegotiations, Emergency Actions, Antidumping Initiations and VERS

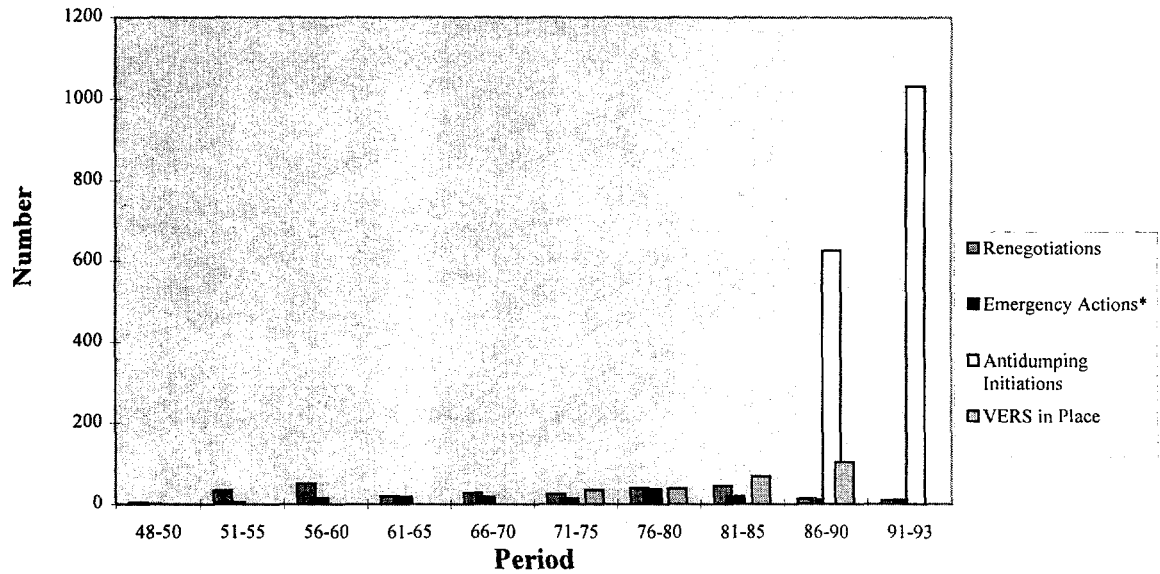
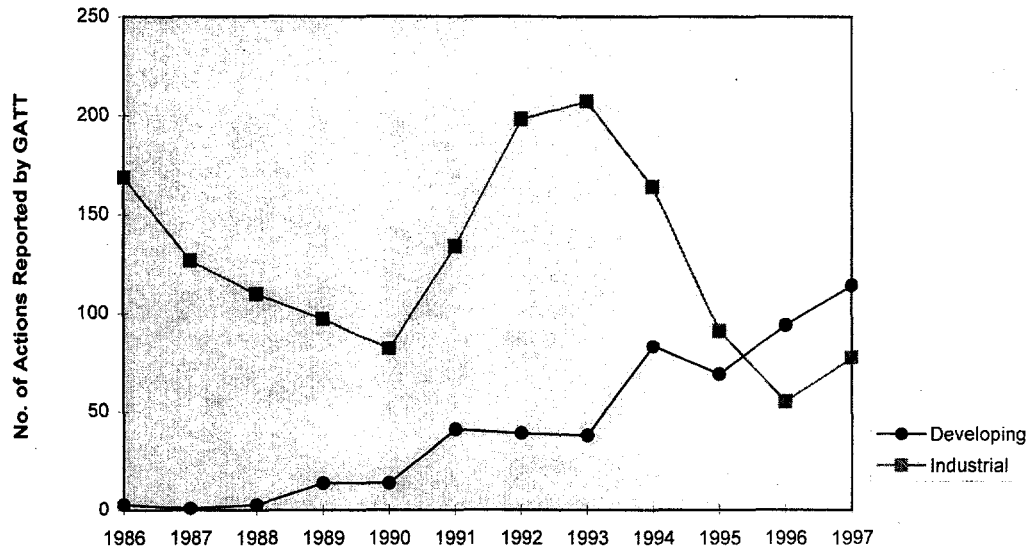


Chart 3

Antidumping Initiations by Developed and by Developing Countries
(1986-1997)



ANNEX TABLE
Numbers of Antidumping Initiations

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Industrial												
Australia	54	40	20	19	23	46	76	61	45	6	8	22
Austria	0	0	0	0	0	0	4	4	0			0
Canada	27	24	20	14	15	12	16	37	22	9	6	8
E.U.	23	17	30	29	15	15	23	33	47	37	16	26
Finland	0	5	5	0	0	1	0	0	0			0
Japan	0	0	0	0	0	0	3	0	1	0	0	0
New Zealand	0	0	4	8	1	6	13	4	2	9	9	1
Sweden	2	0	0	2	4	2	1	0	0			0
U.S.	63	41	31	25	24	52	62	68	47	30	16	20
Total Industrial	169	127	110	97	82	134	198	207	164	91	55	77
Developing												
Argentina										6	42	18
Brazil	0	0	1	2	0	2	9	4	30	12	1	19
Chile										2	4	2
Colombia	0	0	0	0	0	0	0	0	4	1	5	1
Guatemala											1	
India	0	0	0	0	0	0	5	3	1	9	5	20
Israel											4	7
Korea	3	1	0	0	3	2	0	7	4	3	6	18
Malaysia												2
Mexico	0	0	2	12	11	13	25	24	23	18	3	5
Peru										4	4	3
Philippines												2
Poland	0	0	0	0	0	24	0	0	0			0
Singapore										2		0
South Africa										9	14	11
Thailand												1
Turkey	0	0	0	0	0	0	0	0	21	2	0	5
Venezuela										1	5	0
Total Developing	3	1	3	14	14	41	39	38	83	69	94	114

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